

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 19071
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On September 7, 2005, the staff of the Tax Discovery Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax, penalty, and interest for the taxable years 1998 and 2000 through 2003 in the total amount of \$40,297.

On September 21, 2005, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing and has not provided any additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Tax Discovery Bureau (Bureau) received information that indicated the taxpayer was required to file Idaho individual income tax returns. The Bureau researched the Tax Commission's records and found that the taxpayer filed an income tax return for 1999 but did not file income tax returns for the tax years 1998 and 2000 through 2003. The Bureau sent the taxpayer a letter asking about his requirement to file Idaho income tax returns for those years. The taxpayer responded that he was not required to file. The Bureau considered the taxpayer's statement with the information available and decided additional information was needed from the taxpayer. The Bureau sent the taxpayer a domicile questionnaire which the taxpayer completed and returned. From this information, the Bureau determined the taxpayer was domiciled in Idaho

during the years in question. The Bureau prepared income tax returns for the taxpayer and sent him a Notice of Deficiency Determination. The taxpayer protested the Bureau's determination.

The Bureau referred the matter for administrative review. The Tax Commission sent the taxpayer a letter giving him two alternative methods for having the Notice of Deficiency Determination redetermined. The taxpayer responded that he never stole one dime from the residents of Idaho. He stated that he moved [Redacted] and did not move back to Idaho until 2003. The taxpayer's last statement to the Tax Commission was that he would not accept any other letters and that the Tax Commission would have to deal with his lawyer.

Despite the taxpayer's last statement, the Tax Commission sent the taxpayer another letter requesting authorization to speak with his attorney. The taxpayer did not respond. The Tax Commission contacted the attorney the taxpayer referred to in his last letter but found the attorney no longer worked for that firm and apparently no one in the firm was representing the taxpayer. Consequently, the Tax Commission had no further contact with the taxpayer and had no contact with anyone representing the taxpayer. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayer stated he left Idaho [Redacted]. He stated in the domicile questionnaire that he returned to Idaho [Redacted]. In June 2002 the taxpayer purchased a manufactured home in Idaho. In April 2003 the taxpayer moved back to Idaho when his employment [Redacted] was terminated.

[Redacted]. The taxpayer stated he had no home [Redacted] while he was employed [Redacted]. He gave no information about his living arrangements or his activities [Redacted]. He stated his mail was sent to an address in Idaho where [Redacted] would send it to him once a month.

Idaho Code section 63-3002 states the intent and purpose of the Idaho Income Tax Act,

[T]o impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state.

Idaho Code section 63-3013 defines resident as any individual who is domiciled in Idaho for the entire year or who maintains a place of abode in Idaho and is present in the state for more than 270 days in the taxable year.

Domicile is defined in the Tax Commission's Administrative Rules as "the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time." Income Tax Administrative Rule 030.02 (IDAPA 35.01.01.030.2). The essential distinction between residence and domicile is that domicile requires intent to remain at one place for an indeterminate or indefinite period. Reubelmann v. Reubelmann, 38 Idaho 159, 164, 220 P 404, 405 (1923). Domicile, once established, persists until a new domicile is legally acquired. In re Cooke's Estate, 96 Idaho 48, 524 P.2d 176 (1973). In domicile law three things must happen for a change of domicile to occur: 1) intent to abandon the old domicile; 2) intent to acquire a new domicile; and 3) physical presence in the new domicile. See Idaho Income Tax Administrative Rules IDAPA 35.01.01.030.02.a. See also, Pratt v. State Tax Commission, 128 Idaho 883, 885 n.2, 920 P.2d 400, 402 n.2 (1996). Whether an individual has the specific intent to create a new domicile is evidenced by that individual's actions and declarations. Generally speaking, in domicile cases an individual's actions are accorded more weight than his declarations since declarations can tend to be deceptive and self-serving. Allen v. Greyhound Lines, 583 P.2d 613, 614 (Utah 1978).

In determining where an individual is domiciled, the fact-finder must look at all the surrounding facts and circumstances. No one fact or circumstance is, by itself, determinative. Rather, the decision-maker must analyze all the relevant facts and determine whether, taken as a whole, those facts point in favor of some particular place as the person's domicile. Since a person's domicile, once established, is presumed to continue until legally changed, the burden of proof is always on the party asserting a change in domicile to show that a new domicile was, in fact, created. State of Texas v. State of Florida, 306 U.S. 398, 427, 59 S.Ct. 563, 577 (1939).

It takes no particular period of time to acquire a new domicile, the result being achieved when the person is physically present in the new place with a state of mind regarding the new place as home. Moreover, mere length of time cannot convert physical presence or residence into domicile. Taylor v. Milan, 89 F.Supp. 880 (1950). Domicile is not necessarily lost by protracted absence from home where the intention to return remains. Wilson v. Pickens, 444 F. Supp. 53 (W.D. Okl. 1977).

From the information available, the Tax Commission did not find that the taxpayer made a total and complete separation from Idaho when he left to pursue employment [Redacted]. The taxpayer retained his Idaho driver's license throughout the years [Redacted]. He purchased Idaho resident fish and game licenses for all but two of the years in question. He purchased a manufactured home in Idaho and claimed the homeowner's exemption in 2002. The only act the taxpayer stated he did which could show abandonment of Idaho was that he voted [Redacted]. He did not present anything to show that he considered [Redacted] to be a permanent home with all the sentiment, feeling and permanent association that goes with calling a place a home. See Starer v. Gallman, 50 A.D.2d 28, 377 N.Y.S.2d 645 (1975).

Other factors that point to Idaho being the taxpayer's domicile are his vehicle registered in Idaho, he spent his off time in Idaho, and he did not receive the [Redacted] permanent fund dividend. For all practical purposes, the appearance is the taxpayer was in [Redacted] for employment purposes only. Nothing was presented to show that the taxpayer went [Redacted] to make [Redacted] his permanent, indefinite home. Therefore, the Tax Commission finds the taxpayer was domiciled in Idaho during the years 1998 and 2000 through 2003 and as such was required to file Idaho income tax returns for those years.

The returns the Bureau prepared for the taxpayer show the taxpayer as being domiciled in Idaho. The taxpayer has not shown this to be an incorrect determination. He has not met his burden of proof. Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984). Therefore, the Tax Commission upholds the Bureau's determination.

WHEREFORE, the Notice of Deficiency Determination dated September 7, 2005, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$3,749	\$ 937	\$1,955	\$ 6,641
2000	7,682	1,921	2,831	12,434
2001	7,198	1,800	2,097	11,095
2002	6,138	1,535	1,394	9,067
2003	2,251	563	392	3,206
			TOTAL DUE	<u>\$ 42,443</u>

Interest is calculated to March 1, 2007.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is included with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]  
[REDACTED]  
[REDACTED]

Receipt No.